

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAMIAN BYFIELD AND CHARMAINE  
EDMONDSON,

**ANSWER**

Plaintiffs,

07 CV 10499 (LAP)(GWG)

-against-

Jury Trial Demanded

CITY OF NEW YORK, POLICE COMMISSIONER  
RAYMOND KELLY, INSPECTOR THOMAS HARRIS,  
POLICE OFFICER MIKE CIVIL, POLICE OFFICER  
MICHAEL BRIGGS, POLICE OFFICER JERRY ORTIZ,  
POLICE OFFICER JENNYANN NELSON, POLICE  
OFFICER SHAWN KALLOFF, JOHN DOES #1-2,

Defendants.

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Defendants Thomas Harris, Mike Civil, Jerry Ortiz and Jenny-Ann Nelson by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their Answer to the Complaint<sup>1</sup>, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiff purports to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the Complaint.
3. Deny the allegations set forth in paragraph "3" of the Complaint, except admit that plaintiff purports to proceed as stated therein.
4. Deny the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
5. Deny the allegations set forth in paragraph "5" of the Complaint.

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<sup>1</sup> On May 30, 2008, defendants City of New York and Raymond Kelly filed an answer to the complaint.

6. Deny the allegations set forth in paragraph “6” of the Complaint, except admit that plaintiff purports to base the venue of this action as stated therein.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the Complaint.

8. Deny the allegations set forth in paragraph “8” of the Complaint, except admit that the City of New York is a municipal corporation incorporated under the laws of the State of New York and respectfully refer the Court to the New York State Charter.

9. Deny the allegations set forth in paragraph “9” of the Complaint, except admit that Raymond Kelly is employed by the City of New York as Commissioner of the New York City Police Department.

10. Deny the allegations set forth in paragraph “10” of the Complaint, except admit that Thomas Harris is employed by the City of New York as a Police Inspector.

11. Deny the allegations set forth in paragraph “11” of the Complaint, except admit that Mike Civil, Michael Briggs, Jerry Ortiz, Jennyann Nelson and Shawn Kalloff are employed by the City of New York as police officers.

12. Paragraph “12” of the Complaint states conclusions of law rather than averments of facts and thus no response is required.

13. Deny the allegations set forth in paragraph “13” of the Complaint except admit that a document purporting to be a notice of claim was received by the City of New York on September 5, 2006 and that the claims have not been settled.

14. Deny the allegations set forth in paragraph “14” of the Complaint.

15. Deny the allegations set forth in paragraph “15” of the Complaint.

16. Deny the allegations set forth in paragraph “16” of the Complaint.

17. Deny the allegations set forth in paragraph “17” of the Complaint.

18. Deny the allegations set forth in paragraph “18” of the Complaint, including its subparts.

19. In response to the allegations set forth in paragraph “19” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of this answer, as if fully set forth herein.

20. Deny the allegations set forth in paragraph “20” of the Complaint.

21. Deny the allegations set forth in paragraph “21” of the Complaint.

22. In response to the allegations set forth in paragraph “22” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of this answer, as if fully set forth herein.

23. Deny the allegations set forth in paragraph “23” of the Complaint.

24. Deny the allegations set forth in paragraph “24” of the Complaint.

25. Deny the allegations set forth in paragraph “25” of the Complaint.

26. Deny the allegations set forth in paragraph “26” of the Complaint.

27. Deny the allegations set forth in paragraph “27” of the Complaint.

28. Deny the allegations set forth in paragraph “28” of the Complaint.

29. Deny the allegations set forth in paragraph “29” of the Complaint.

30. In response to the allegations set forth in paragraph “30” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of this answer, as if fully set forth herein.

31. Deny the allegations set forth in paragraph “31” of the Complaint.

32. Deny the allegations set forth in paragraph “32” of the Complaint.

33. Deny the allegations set forth in paragraph “33” of the Complaint.

34. In response to the allegations set forth in paragraph “34” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of this answer, as if fully set forth herein.

35. Deny the allegations set forth in paragraph “35” of the Complaint.

36. Deny the allegations set forth in paragraph “36” of the Complaint.

37. Deny the allegations set forth in paragraph “37” of the Complaint.

38. Deny the allegations set forth in paragraph “38” of the Complaint.

39. In response to the allegations set forth in paragraph “39” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of this answer, as if fully set forth herein.

40. Deny the allegations set forth in paragraph “40” of the Complaint.

41. Paragraph “41” of the Complaint states conclusions of law rather than averments of facts and thus no response is required. To the extent a response is required, defendants admit that plaintiff was arrested on August 22, 2006.

42. Paragraph “42” of the Complaint states conclusions of law rather than averments of facts and thus no response is required.

43. Deny the allegations set forth in paragraph “43” of the Complaint.

44. Deny the allegations set forth in paragraph “44” of the Complaint.

45. In response to the allegations set forth in paragraph “45” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of this answer, as if fully set forth herein.

46. Deny the allegations set forth in paragraph “46” of the Complaint.

47. Deny the allegations set forth in paragraph “47” of the Complaint.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “48” of the Complaint.

49. Deny the allegations set forth in paragraph “49” of the Complaint.

50. Deny the allegations set forth in paragraph “50” of the Complaint.

51. In response to the allegations set forth in paragraph “51” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of this answer, as if fully set forth herein.

52. Deny the allegations set forth in paragraph “52” of the Complaint.

53. Deny the allegations set forth in paragraph “53” of the Complaint.

54. In response to the allegations set forth in paragraph “54” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of this answer, as if fully set forth herein.

55. Deny the allegations set forth in paragraph “55” of the Complaint.

56. Deny the allegations set forth in paragraph “56” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

57. The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

58. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

59. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendants have governmental immunity from liability.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

60. Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct or the culpable and/or negligent conduct of others and was not the proximate result of any act of the defendants.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

61. Punitive damages cannot be assessed against the City of New York.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

62. At all times relevant to the acts alleged in the Complaint, the City's employees acted reasonably in the proper and lawful exercise of their discretion.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

63. Plaintiffs' claims may be barred, in whole or in part, because plaintiff may have failed to comply with all conditions precedent to suit.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

64. The individual defendant did not violate any clearly established constitutional or statutory right of which a reasonable person would have known, and, therefore, is protected by qualified immunity.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

65. Venue does not properly lie in this district.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

66. There was probable cause for plaintiff's arrest, detention and/or prosecution.

**WHEREFORE**, defendants request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
August 29, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendants City of New York, Kelly,  
Harris, Civil, Ortiz and Nelson  
100 Church Street  
New York, New York 10007  
(212) 227-0414

By: 

Karl J. Ashanti (KA 4547)  
Assistant Corporation Counsel  
Special Federal Litigation Division

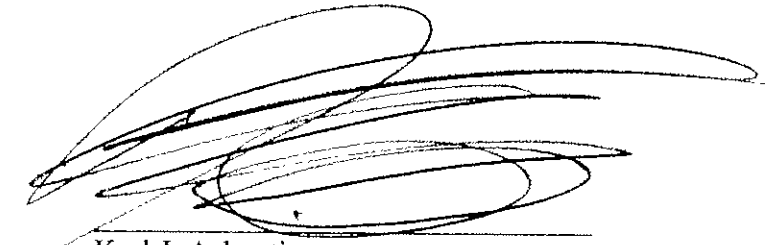
To: Nicole Bellina, Esq. (By ECF and Mail)  
Stoll, Glickman, & Bellina LLP  
Attorneys for plaintiffs  
71 Nevins Street  
Brooklyn, NY 11217  
(718) 852-4491

**DECLARATION OF SERVICE BY ECF AND FIRST-CLASS MAIL**

I, **Karl J. Ashanti**, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that on **August 29, 2008**, I served the annexed **Answer** by ECF and by depositing a copy of the same, enclosed in a first-class postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, upon the following:

Nicole Bellina, Esq.  
Stoll, Glickman, & Bellina LLP  
Attorneys for plaintiffs  
71 Nevins Street  
Brooklyn, NY 11217

Dated: New York, New York  
August 29, 2008



Karl J. Ashanti  
Assistant Corporation Counsel



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UNITED STATES DISTRICT COURT  
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EDMONDSON,

Plaintiffs,

-against-

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COMMISSIONER RAYMOND KELLY,  
INSPECTOR THOMAS HARRIS POLICE  
OFFICER MIKE CIVIL, POLICE OFFICER  
MICHAEL BRIGGS, POLICE OFFICER JERRY  
ORTIZ, POLICE OFFICER JENNYANN  
NELSON, POLICE OFFICER SHAWN  
KALLOFF, JOHN DOES #1-2,

Defendants.

**ANSWER**

**MICHAEL A. CARDOZO**

*Corporation Counsel of the City of New York  
Attorney for Defendants City of New York  
100 Church Street  
New York, N.Y. 10007*

*Of Counsel: Karl J. Ashanti  
Tel: (212) 227-0414  
NYCLIS No. 2008-001231*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 200.....*

*..... Esq.*

*Attorney for .....*